

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**
WASHINGTON, D.C. 20554

In the Matter of

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.

Petition for Rulemaking

CG Docket No. 05-231

To: The Commission

**REPLY COMMENTS
OF LINCOLN BROADCASTING COMPANY
(KTSF-TV, SAN FRANCISCO, CALIFORNIA)**

Lincoln Broadcasting Company, A California Limited Partnership ("Lincoln"), licensee of commercial independent television broadcast station KTSF (TV and DT), San Francisco, CA ("KTSF" or "Station"), submits these Reply Comments by its attorneys. Lincoln supports fully the goal of full closed captioning. In opening Comments filed November 10, 2005 in this proceeding, Lincoln provided record support showing the continuing need for the Section 79.1(d)(3) exemption of non-English, non-Spanish programming from closed captioning requirements.¹ Notably, though Lincoln has not reviewed each of the hundreds of comments filed, it appears that no opening commenter has questioned that need. Based on certain opening Comments, in this Reply Lincoln augments its demonstration of the need for the Commission to retain the exemption and to balance its enforcement of the January 1, 2006 deadline with the recognition that the deadline places in particular jeopardy programs directed to minority ethnic communities such as those in San Francisco that KTSF serves.

Captioning cost. Several opening commenters discuss the still-very-high cost of closed captioning English- or Spanish-language programming. NBC Telemundo, for instance, says the

¹ Comments of Lincoln Broadcasting Company, A California Limited Partnership, to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at 1 (November 10, 2005)("Lincoln Comments").

cost has dropped relatively little from \$120/hr. in 1997 to \$88/hr. today.² NBC Telemundo and others say the current cost is much higher than the FCC anticipated it would be 8 years ago, particularly for real-time captioning.

As Lincoln indicated in opening Comments, its cost for captioning one hour of the Chinese programming it produces would be \$5700, almost 65 times NBC Telemundo's cost.³ This underscores the critical continuing need for the non-Spanish, non-English exemption. For KTSF's English-language programming, the best closed captioning rate Lincoln has obtained is \$610 per hour (for captioning, encoding and dub), nearly seven times the Telemundo rate. Presumably that is a function of volume and the bargaining power of two networks combined (Telemundo and its owner, NBC). In contrast, Lincoln is a sole independent station. Lincoln asks that in resolving this proceeding as to foreign-language and English programming the Commission be mindful that large group and network owners can command much lower captioning prices, although the owners still consider them to be high, than smaller non-network-affiliated station licensees who serve minority audiences. Smaller licensees also are less able to absorb the impact of captioning costs than their larger counterparts, who can spread the expense over multiple stations and markets.

Captioning costs and the January 1, 2006 deadline endanger programs. Hubbard Broadcasting is among those who argue that strict captioning standards endanger local programming by creating a Hobson's choice between paying to caption or canceling programs, particularly local ones.⁴ Lincoln agrees. Several KTSF programs, especially those produced by small independent producers in the San Francisco market to serve niche, underserved ethnic and

² Comments of NBC Telemundo License Co., to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at 12 (November 10, 2005).

³ Lincoln Comments, *supra* note 1 at 1.

⁴ Comments of Hubbard Broadcasting, Inc., to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at (November 10, 2005), at 4-8.

minority audiences, are vulnerable to discontinuation because the producers cannot afford to close caption and Lincoln already subsidizes their programs. Those programs are part of the essence of local public service and exemplify program diversity. Lincoln respectfully requests that in implementing the January 1 deadline the Commission recognize that it disserves the public interest for programs such as these to disappear from the screens of every viewer, hearing and hearing-impaired, due to overly strict enforcement of the deadline. The Commission should incorporate that principle into its handling of exemption petitions and enforcement of its captioning rule, especially during the period after January 1 when 100% of nonexempt programming must be closed captioned. Many distributors and providers, including Lincoln, are now dealing with the programming that is most difficult to caption, both technically and financially, of all aired programming. Programs more easily captioned have been captioned during the earlier phases of implementation; the most difficult-to-caption programs have been saved for the last deadline of the schedule, which is in a few days.

ENR captioning must continue to count as full compliance. NAB and others urge this, defend the accuracy and effectiveness of ENR, and say that news programs might have to be cancelled if the FCC cuts back on ENR use any time soon.⁵ Lincoln agrees. Lincoln is able to provide open, not closed, captions in Chinese for its many hours of station-produced newscasts only because the material is scripted in advance. Lincoln has been unable to identify any live captioning technology for Chinese programming even in Asia. Scripted open captioning remains the only option for Chinese- and other non-English/Spanish programming now and for the foreseeable future. WGBH Center for Accessible Media urges the FCC to further restrict ENR

⁵ Comments of the National Association of Broadcasters, to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at 9-10 (November 10, 2005).

use because it is not as good as “real” closed captioning.⁶ That ignores the reality that ENR is the only available or feasible method for certain programs, and it is better to have ENR captioning than none.

Voice recognition is further away for non-English/Spanish programming than for other types of programs. NAB and others says that voice recognition has not emerged as the panacea the FCC thought in 1997 that it might be now.⁷ That is particularly true for KTSF’s foreign language schedule, for which voice recognition lags behind other programming.

The Commission should change its current policy toward captioning of bilingual programming that is mostly in non-Spanish non-English. KJLA argues that mixed English/Spanish programming presents special captioning challenges and that the 100% requirement for it should be delayed until 2010 when all Spanish-language programming has to be captioned.⁸ In other words, KJLA in effect seeks to reverse the current ill-advised policy of counting as English all programs that have more than a drop of English in them. Non-Spanish/English languages often incorporate English words and phrases, as English has become the world’s most universal language. That does not negate the fact that the main language of a program is Chinese, or Hindi, or Greek. It is self-defeating and harmful to many minority ethnic viewers, and the producers and stations that serve them, for the Commission to require closed captioning of the English in a program whenever it is more than “snippets.”⁹ For mixed

⁶ Comments of WGBH Center for Accessible Media, to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at 22 (November 10, 2005).

⁷ Comments of NAB, *supra* note 5, at 2.

⁸ Comments of KJLA, LLC, to the *Notice of Proposed Rulemaking* in CG Docket No. 05-231, at 5-6 (November 10, 2005).

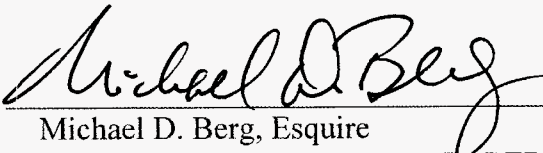
⁹ In the Matter of ABS-CBN International Video Programming Accessibility Petition for Waiver of Closed Captioning Requirements, *Memorandum Opinion and Order*, DA 05-2262, para. 5 (2005) (citing Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility, *Report and Order*, 13 FCC Rcd 3272, para. 83 (1997)).

English/foreign non-Spanish programs in which the foreign language predominates, the Commission should either extend the captioning deadline for the English portion to at least 2010, the current full implementation date for Spanish, or, better still, until such time as the technology is available to closed caption consistent with the time and cost considerations that govern survival of the program.

There are several reasons for this based on Lincoln's experience in its market. First, in many cases the English in a program is a small proportion of the total. Though the English is more than a trace, it is not enough by itself to convey an understanding of the program to the foreign-language audience. Captioning it in English is therefore unproductive. Second, much of the audience, often a majority of it, may not understand captions in English. They watch the program for its foreign language majority content. Third, closed captioning the English would require that the program be delivered to a captioning service, which delays broadcast for as much as a week or more. For time-sensitive material such as news, this is untenable. Fourth, the \$600-plus per hour cost for small, "low-volume" users of captioning services is prohibitive for most local, independent producers.

Respectfully submitted,

**LINCOLN BROADCASTING COMPANY, A
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By: 
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December 16, 2005

Michael Sherman,
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Attachment: Declaration of Michael Sherman

DECLARATION

I, Michael Sherman, General Manager of KTSF, San Francisco, CA, declare that I assisted in the preparation of, and have read, the foregoing Reply Comments of Lincoln Broadcasting Company, A California Limited Partnership (KTSF, San Francisco, California), in CG Docket No. 05-231. I obtained or oversaw the development of the factual material contained therein, and declare under penalty of perjury that said material is true and correct to the best of my knowledge. Executed on December 14, 2005.

A handwritten signature in black ink, appearing to read 'Michael Sherman', is written over a horizontal dashed line.

Michael Sherman